

84TH CONGRESS
2D SESSION

S. 3169

CB
HR-9182

IN THE SENATE OF THE UNITED STATES

FEBRUARY 8, 1956

Mr. WATKINS introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To amend the Immigration and Nationality Act, to regulate judicial review of deportation and exclusion orders, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That the Immigration and Nationality Act of 1952 (66 Stat.
4 163; 8 U. S. C. 1101), is hereby amended by adding to
5 title II the following new section:

6 “SEC. 293. (a) (1) Notwithstanding the provisions of
7 the Administrative Procedure Act or any other law, includ-
8 ing section 405 (a) of this Act, the district courts of the
9 United States shall have jurisdiction to review orders of de-
10 portation heretofore or hereafter made against aliens within

1 the United States only as provided in this subsection. A de-
2 portation order shall not be reviewed by any court if the
3 alien has not exhausted the administrative remedies for review
4 of such order available to him as of right under the immigra-
5 tion laws and regulations or if he has departed from the
6 United States after the issuance of the order. Subject to the
7 provisions of this subsection, any alien held in custody pur-
8 suant to an order of deportation may obtain judicial review
9 thereof by habeas corpus proceedings. Any alien against
10 whom an order of deportation has been made after Decem-
11 ber 23, 1952, may, if not in custody pursuant to such order,
12 obtain judicial review by filing a petition for review in ac-
13 cordance with this subsection. Any judicial proceeding to
14 review an order of deportation made after December 23,
15 1952, and prior to the date of the enactment of this subsection
16 which is pending unheard in any district court of the United
17 States on the date of the enactment of this subsection (other
18 than a habeas corpus or criminal proceeding in which the
19 validity of the deportation order has been challenged) shall
20 be transferred for determination in accordance with this sub-
21 section to the district court having jurisdiction to entertain a
22 petition for review under this subsection.

23 “(2) A petition for review may be filed not later than
24 six months from the date of the deportation order or from
25 the date of the enactment of this subsection, whichever is

1 the later, except that no such petition or a petition for
2 habeas corpus to review the validity of the order may be
3 filed by an alien during the pendency of a criminal proceed-
4 ing against such alien for violation of subsections (d) or
5 (e) of section 242 of this Act. No petition for review
6 or for habeas corpus shall be entertained if the validity of
7 the deportation order has been previously determined in
8 any civil or criminal proceeding, unless the petition pre-
9 sents grounds which the court finds could not have been
10 presented in such prior proceeding or the court finds that
11 the remedy provided by such prior proceeding was inade-
12 quate or ineffective to test the validity of the order. Every
13 petition for review or for habeas corpus hereafter filed shall
14 state whether the validity of the order of deportation has
15 been upheld in any prior judicial proceeding and, if so,
16 the nature and date thereof, and the court in which such
17 proceeding took place. No petition for review or for habeas
18 corpus may be withdrawn without the consent of the re-
19 spondent and the court in which filed, which consent shall
20 be entered in the record of the court. In any case in which
21 consent to withdrawal of a petition is not granted, the court
22 shall proceed to determine the petition and enter a final
23 order accordingly.

24 “ (3) A petition for review shall be entitled ‘
25 Petitioner against The Immigration and Naturalization Serv-

1 ice, Respondent'. The petition shall be filed in the United
2 States district court for the district in which the admin-
3 istrative proceedings before a special inquiry officer under
4 subsection (b) of section 242 of this Act were conducted
5 in whole or in part, but not in more than one district. Upon
6 the filing of such a petition, two copies shall be served (per-
7 sonally or by registered mail) upon the United States attor-
8 ney for the district in which the petition is filed and one
9 copy upon the official of the Service in charge of the Service
10 district in which the court is located. The service of the
11 petition for review upon such official of the Service shall
12 stay the deportation of the alien pending determination
13 of the petition by the court, unless the court otherwise di-
14 rects. The respondent shall file any appropriate motion or
15 answer to the petition within twenty days after service of
16 the petition upon the United States attorney, unless for
17 cause shown additional time is allowed. Where necessary,
18 the respondent shall produce in court the administrative
19 record upon which the deportation order was made. The
20 hearing and disposition of a petition for review shall be expe-
21 dited in the same manner as is required in habeas corpus
22 proceedings and, except on appeal, the Federal Rules of
23 Civil Procedure shall not apply. Except as provided in para-
24 graph (4) of this subsection, the petition shall be determined
25 solely upon the administrative record upon which the depor-

1 tation order is based and the Attorney General's findings of
2 fact, if supported by reasonable, substantial, and probative
3 evidence on the record considered as a whole, shall be
4 conclusive.

5 “(4) Any person subject to an order of deportation
6 who claims to be a national of the United States and makes
7 a showing that his claim is not frivolous shall be entitled to
8 have the issue of his nationality determined de novo by the
9 district court in any applicable form of proceeding author-
10 ized by this subsection, but shall not be entitled to have such
11 issue determined under section 360 (a) of this Act or other-
12 wise.

13 “(5) If the validity of a deportation order has not been
14 judicially determined, its validity may be challenged in a
15 criminal proceeding against the alien for violation of sub-
16 sections (d) or (e) of section 242 of this Act only by
17 separate motion for judicial review before trial. Such
18 motion shall be determined by the court without a jury and
19 before the trial of the general issue. Except as provided in
20 paragraph (4) of this subsection, the determination shall be
21 made solely upon the administrative record upon which the
22 deportation order is based and the Attorney General's find-
23 ings of fact, if supported by reasonable, substantial, and pro-
24 bative evidence on the record considered as a whole, shall be
25 conclusive. If the deportation order is held invalid the court

1 shall dismiss the indictment and the United States shall
2 have the right to appeal to the Court of Appeals within
3 thirty days. The procedure on such appeal shall be as pro-
4 vided in the Federal Rules of Criminal Procedure.

5 “(6) Nothing in this subsection shall be construed to
6 require the Attorney General to defer deportation of an
7 alien after the issuance of a deportation order because of
8 the right of judicial review of the order accorded by this
9 subsection, or to relieve any alien from compliance with
10 subsections (d) and (e) of section 242 of this Act. Noth-
11 ing in this subsection shall be construed to preclude the
12 Attorney General from detaining or continuing to detain
13 an alien or from taking him into custody pursuant to subsec-
14 tion (c) of section 242 of this Act at any time after the
15 issuance of a deportation order.

16 “(b) Notwithstanding the provisions of the Adminis-
17 trative Procedure Act or any other law, including section
18 405 (a) of this Act, an alien against whom a final order of
19 exclusion has been made heretofore or hereafter under the
20 provisions of section 236 of this Act or comparable pro-
21 visions of any prior Act may obtain judicial review of
22 such order by habeas corpus proceedings and not otherwise.
23 An exclusion order shall not be reviewed by any court if
24 the alien has not exhausted the administrative remedies for
25 review of such order available to him as of right under the

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1 immigration laws and regulations or if he has departed
2 from the United States after the issuance of the order.”

3 Sec. 2. The following is hereby added in the proper
4 place in the table of contents relating to chapter 9, title II,
5 of the Immigration and Nationality Act of 1952:

“Sec. 293. Judicial Review.”

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